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Schnitker, John P

**From:** SMiller@entrix.com  
**Sent:** Monday, February 11, 2008 5:17 PM  
**To:** Richard.Fristik@wdc.usda.gov; mark.plank@wdc.usda.gov; Matthew.Ponish@wdc.usda.gov; Sarah.bridges@wdc.usda.gov; laurie.ristino@usda.gov; Matthew.Judy@ftw.usda.gov; melanie.pearson@eh.doe.gov; Carolyn.Osborne@eh.doe.gov; ldean@achp.gov; Clark.Richard@epa.gov; Hessert.Aimee@epa.gov; Larry\_R\_Gamble@fws.gov; meg\_vanness@fws.gov; svoboda.larry@epamail.epa.gov; Pat\_Carter@fws.gov; Daniel.E.Cimarosti@nwo02.usace.army.mil; Patsy.J.Crooke@nwo02.usace.army.mil; joel.o.ames@usace.army.mil; Georgeanne.L.Reynolds@usace.army.mil; christine.godfrey@hqda.army.mil; Martha.S.Chiely@nwo02.usace.army.mil; ssstrupka-burda@nebraskahistory.org; bpushendorf@nebraskahistory.org; tsteinach@bbc.net; Judith.deel@dnr.mo.gov; david.halpin@illinois.gov; anne.haaker@illinois.gov; squinnell@nd.gov; fswenson@nd.gov; paige.hoskinson@state.sd.us; jay.vogt@state.sd.us; pzollner@kshs.org; tweston@kshs.org; mheisch@okhistory.org; cwallis@okhistory.org; cultural@cherokee.org; gyellowman@c-a-tribes.org; awindyboy@earthlink.net; tfrancis@delawarenation.com; sam.allen@fsst.org; mikea@fcpotawatomi.com; cultres@remontel.net; bryan@fortsillapache.com; bquackenbush@ho-chunk.com; kentcollier2000@yahoo.com; pamelahalverson@hotmail.com; jsutterfield@miamination.com; nataliew@millelacsojibwe.nsn.us; preservation@muscogeeeneration-nsn.gov; white\_jo123@yahoo.com; edgar@oglala.org; dconrad@osagetribe.org; ahunter@osagetribe.org; pawneeodyssey@yahoo.com; mark.pamish@pokagon.com; chairmar@ponca.com; smassey@sacandfoxnation-nsn.gov; oyateinajin@yahoo.com; robertcampbell2005@yahoo.com; bcrep@swtc.us; vinet@venturecomm.net; charlotte.almanza@swst.us; jmswhitted@yahoo.com; dianne.desrosiers@swst.us; zihe2000@hotmail.com; kgraywater@spiritlakenation.com; tero@stellarinet.com; mentz\_tim@yahoo.com; jeremycombrink33@hotmail.com; redhawk@mhanation.com; istopp@unitedkeetoowahband.org; dedrapeau@yahoo.com; jmiller@iowanation.org; garyr@poncatribe-ne.org; joegillies@mhanation.com; eagletrax@hotmail.com; bdennyceo@yahoo.com; kdernuth@entrix.com; Orlando, Elizabeth A; kenneth.jessepe@ktik-nsn.gov; mike.koski@trow.com; justkiddn\_nancy@hotmail.com; indart@access-one.com; thpo@rtc.coop; ostnrra@gwtc.net; shuq@sicangu.com; ostnrrramd@gwtc.net; ostnrrfd@gwtc.net; ostbbrd@gwtc.net; pbrady@mhanation.com; paintswalking@hotmail.com; paintshimselfyellow@yahoo.com; rstthpo@yahoo.com; dancedagain03@yahoo.com; b.rencountre@yahoo.com; ayellowfat@yahoo.com; jsmith@standingrock.org; smiller@entrix.com; kranzetta@entrix.com; rcgoodwin@rcgoodwin.com; Conrad.fisher@cheyennenation.com; rtrudell@santeedakota.org; cdouglas@kawnation.com; john.murray@blackfeetplanning.org; aliceischaui@yahoo.com; sderoin@spiritlakenation.com; joe.williams@ktik-nsn.gov; kfreeman@entrix.com; jim.white@sidley.com; cwskye@mncomm.com  
**Subject:** Revised Final Keystone PA  
**Attachments:** Final PA 02-11-08 with markup.doc

This message is sent on behalf of Betsy Orlando at Department of State.

The Department of State (DOS) and the Advisory Council on Historic Preservation, together with other parties, have worked in close collaboration to produce this Programmatic Agreement (PA). DOS wishes to emphasize to all consulting parties that while compliance with the procedures in this PA satisfies the DOS's section 106 responsibilities, it does not represent an end point the consultation process. Rather, as set forth in the PA, the DOS and other parties will continue their efforts to protect historic properties, including those historic properties of cultural and religious significance to Indian tribes. To that end, the DOS intends to continue its dialogue with tribal representatives, as necessary, during the four-year term that the PA is in force, making a reasonable and good faith effort to avoid, minimize or mitigate impacts on historic properties.

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ADOLPH H EISNER  
DATE/CASE ID: 04 JUN 2010 200902435

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- As noted in an email sent on Wednesday, February 6, 2008 at 3:53 p.m. from Entrix, some additional changes were needed to the text of the PA that was previously provided to you as a result of comments received from the South Dakota SHPO and the Department of State. The Department of State consulted with the ACHP in making decisions regarding the proposed changes. A copy of the revised PA, containing the changes, is attached. All changes to the document have been highlighted in yellow for ease of review. An e-mail following this one will contain a clean version of the revised PA for your records. The following is an explanation of the reasons for the changes:

1. The relationship of this PA to the Presidential permit. The Department of State fully intends to comply with this PA and to require TransCanada to adhere to its commitments in this PA. Incorporating the entire PA into the Presidential permit, however, introduces into the Presidential permit more parties than is appropriate; the Presidential permit is strictly between the Department of State and TransCanada and is enforced by the Department of State directly against TransCanada. The Department of State has solved this problem by doing several things: (1) it plans to include in any permit it would issue for the Keystone project the condition that TransCanada must abide by its commitments in this PA, a condition that the Department of State is fully prepared to enforce; (2) it intends to have TransCanada sign this PA as an invited signatory; (3) it has modified the language of the PA to state that TransCanada "shall" take certain actions, in order to make clear TransCanada's obligations to carry out those provisions. These revisions are reflected in changes on pp. 3 (two Whereas clauses), 7 (Stipulation V.D.4.b.), 8 (Stipulation V.E.2 & V.E.2.b.), 9 (Stipulation V.F.4.) and 13 (Stipulation VII.B.).

2. Addition of a provision concerning tribal monitoring. The revision of the PA to address # 1 above provided the Department of State with the opportunity to rectify the omission of a provision for tribal monitoring. The South Dakota SHPO identified this omission as a major oversight. A new Stipulation V.F.3 has been added to explicitly address the role of tribes in monitoring during project construction.

3 Amendments. In accord with ACHP regulations, language has been added to Stipulation XII on Amendment, to clarify that amendments to the PA are to be dealt with by signatory parties.

4. The name of the permit applicant in the PA was wrong. The entity that has applied for a Presidential permit is TransCanada Keystone Pipeline, LLC. This change has been made on page 1 of the PA.

5. Relevant regulations and processes. A few minor technical changes were made to the PA to incorporate references to the relevant ACHP regulations and/or processes. These changes will be found on pp. 2 (two Whereas clauses), 3-4 (two Whereas clauses) and 5 (Stipulation V.A.).

6. Change in the Department of State Signatory. The Department of State has determined that this PA will be signed by the Deputy Secretary of State, John D. Negroponte, rather than by a lesser State Department official. This change will be found on p. 16.

- On January 23, 2008 the South Dakota SHPO provided the following comments that were also discussed during a conference call. We have identified specifically how the PA has been revised to address each concern.

1. Stipulation IV. D. (pg 6) - include clarification concerning sites that have not been evaluated for listing on the National Register.

In response to this concern, the language in this section, which is now Stipulation V.D., was revised as follows: "In consultation with the DOS, SHPOs, and other consulting parties, TransCanada may elect to consider and implement avoidance measures prior to completing the evaluation of historic properties."

2. Stipulation IV. E. (pg 7) - If possible add clarifying title to this section. We discussed "Coordination of Construction and Historic Preservation Activities".

The proposed heading was added.

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3. Stipulation IV. F. (pg 8) - As discussed during the conference call add a statement concerning voluntary tribal participation in monitoring activities.

Stipulation V.F now includes a new #3 that states: "*TransCanada shall consider information provided by Indian tribes in completing the identification of historic properties before construction begins and in preparing a construction monitoring plan provided for under Stipulation V.F.4. TransCanada shall provide Indian tribes an opportunity to participate as monitors during project construction.*"

4. Stipulation IV. G. 2. (pg 9)- Provide additional clarify on training, for example will the person conducting the training meet the secretary of interior standards, will the training include identification of artifacts, features, etc... Is it possible for consulting parties to review the information to be presented?

What is now Stipulation V.G.2 has been revised to address these concerns. Currently, it specifies that those providing training must meet professional standards and identifies the broad goals of the proposed training.

5. Stipulation V. A. 2. (pg 9)- Does the 110-foot-wide construction corridor include the access routes, transmission facilities and corridors, temporary work spaces, etc.?

No change to the PA; question requesting additional clarification.

6. Stipulation V. A. 1. d. and B. 2. (pg 10 and 11) - The majority of the document includes Indian tribes as "other consulting parties", but in this stipulation they are specifically identified. It is unclear if this was intentional, but perhaps the entire document should specifically mention Indian tribes instead of lumping them together with other consulting parties. Please let me know if you need further clarification on this point. Indian tribes are considered consulting parties under the terms of this agreement. It is not necessary, however, for every reference to "consulting parties" to specifically reference Indian tribes..

7. Stipulation V. C. 2. (pg 12) - What is the applicable federal law for the treatment of non-Native American human remains?

If there is no law then there is no issue.

8. Stipulation VI. B. (pg 12) - Who will be responsible for curation fees associated with the donation of artifacts to a curation facilities? Is it possible to encourage landowners to donate artifacts to an Indian tribe. The owner of the artifacts is responsible for curation fees. Under the terms of this agreement it should be possible to donate artifacts to a tribal curation facility.

9. Stipulation X. and XII.(pg 14) - "...the DOS, RUS, USACE, NRCS, FSA and USFWS must either (a) execute, as appropriate, an MOA or PA pursuant to 36 CFR part 800.6 or 800.14(b), respectively, or (b) request, take into account, and respond to the comments on of the ACHP in accordance with 36 CFR § 800.7." This sentence does little to clarify these stipulations.

This is standard language used by the ACHP for these administrative provisions.

10. See attachment for comments concerning Attachment C and D. The SHPO's revisions made it clear that the construction contractor should be responsible for stopping construction immediately upon the discovery of a historic property and for implementing protective measures. The US Army Corps of Engineers and other parties suggested a similar change to Attachments C and D as well as what is now Stipulation VI. The exact language proposed by the South Dakota SHPO was not adopted, however, the PA was revised to make it the responsibility of the construction contractor to stop work immediately and implement interim protective measures when there is an unanticipated discovery of a historic property.

- Lastly, we would note that the guidance provided in Entrix's email of February 6, 2008 at 3:53 p.m. is in error. Because of the changes made above, all signatory parties need to re-sign this document on the appropriate signature page and transmit that signature page to the Department of State. All responses from signatory parties are to be mailed within 3 working days of this e-mail. Due to the time difference, this e-mail will be considered sent on Tuesday, February 12, therefore the signature page must be mailed by Friday, February 15. A package is being overnight mailed to you with a hard copy of this agreement, your signature page, and a return envelope to the Department of State.

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Concurring parties may submit their signature anytime during the execution of the PA (Stipulation XI pg. 14).

Thank you for your commitment to ensuring the preservation of historic properties. We look forward to continuing to work with you. If you have any questions, please contact Betsy Orlando at (202) 647-4284,  
orlandoae2@state.gov.

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This message is sent on behalf of Betsy Orlando at Department of State.

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1. The name of the permit applicant in the PA was wrong. The entity that has applied for a Presidential permit is TransCanada Keystone Pipeline, LLC. This change has been made on page 1 of the PA.
2. The relationship of this PA to the Presidential permit. The Department of State fully intends to comply with this PA and to require TransCanada to adhere to its commitments in this PA. Incorporating the entire PA into the Presidential permit, however, introduces into the Presidential permit more parties than is appropriate; the Presidential permit is strictly between the Department of State and TransCanada and is enforced by the Department of State directly against TransCanada. The Department of State has solved this problem by doing several things: (1) it plans to include in any permit it would issue for the Keystone project the condition that TransCanada must abide by its commitments in this PA, a condition that the Department of State is fully prepared to enforce; (2) it intends to have TransCanada sign this PA as an invited signatory; (3) it has modified the language of the PA to state that TransCanada "shall" take certain actions, in order to make clear TransCanada's obligations to carry out those provisions. These revisions are reflected in changes on pp. 3 (two Whereas clauses), 7 (Stipulation V.D.4.b.), 8 (Stipulation V.E.2 & V.E.2.b.), 9 (Stipulation V.F.4.) and 13 (Stipulation VII.B.).
3. Addition of a provision concerning tribal monitoring. The revision of the PA to address the foregoing issue provided the Department of State with the opportunity to rectify the omission of a provision for tribal monitoring. This omission was identified as a major oversight by the South Dakota SHPO. A new Stipulation V.F.3 has been added to explicitly address the role of tribes in monitoring during project construction.
4. Amendments. In accord with ACHP regulations, language has been added to Stipulation XII on Amendment, to clarify that amendments to the PA are to be dealt with by signatory parties.
5. Relevant regulations and processes. A few minor technical changes were made to the PA to incorporate references to the relevant ACHP regulations and/or processes. These changes will be found on pp. 2 (two Whereas clauses), 3-4 (two Whereas clauses) and 5 (Stipulation V.A.).

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Lastly, we would note that the guidance provided in Entrix's email of February 6, 2008 at 3:53 p.m. is in error. Because of the changes made above, **all parties need to re-sign this document on the appropriate signature page and transmit that signature page (by mail, fax, etc.) to the Department of State. All responses from signatory parties are due within 3 working days.**

Thank you for your commitment to ensuring the preservation of historic properties. We look forward to continuing to work with you. If you have any questions, please contact Betsy Orlando at (202) 647-4284, [orlandoae2@state.gov](mailto:orlandoae2@state.gov).

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**Programmatic Agreement**  
Among  
The U.S. Department of State,  
U.S. Army Corps of Engineers,  
U.S. Department of Agriculture, Farm Service Agency,  
U.S. Department of Agriculture, Natural Resources Conservation Service,  
U.S. Department of Agriculture, Rural Utilities Service,  
U.S. Fish and Wildlife Service,  
Advisory Council on Historic Preservation,  
Illinois State Historic Preservation Officer,  
Kansas State Historic Preservation Officer,  
Missouri State Historic Preservation Officer,  
Nebraska State Historic Preservation Officer,  
North Dakota State Historic Preservation Officer,  
Oklahoma State Historic Preservation Officer, and  
South Dakota State Historic Preservation Officer  
Regarding the TransCanada Keystone Pipeline Project

WHEREAS, the U.S. Department of State (DOS) receives and considers applications for permits for cross border oil pipelines pursuant to the authority delegated by the President of the United States under Executive Order (EO) 13337 (69 Federal Register 25299); and

WHEREAS, on April 19, 2006, the DOS received an application for a Presidential Permit from TransCanada Keystone Pipeline, LP (TransCanada) for the TransCanada Keystone Pipeline Project (Keystone Project); and

WHEREAS, DOS has determined that issuance of a Presidential Permit for the Keystone Project triggers review under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f, as amended) and its implementing regulations, "Protection of Historic Properties," (36 CFR Part 800); and

WHEREAS, the Keystone Project undertaking consists of construction of approximately 1,371.4 miles of crude oil pipeline in the United States (1,078 miles of mainline pipeline plus 293.5 miles of the Cushing Extension), associated aboveground facilities (such as pump stations and transmission facilities and substations), and ancillary facilities (such as lateral pipeline, temporary workplace areas and pipe storage and contractor yards); and

WHEREAS, on October 25, 2006, the Advisory Council on Historic Preservation (AChP) entered consultation finding that criteria 3 and 4 of Appendix A, Criteria for Council Involvement in Reviewing Individual Section 106 Cases, of the regulations (36 CFR Part 800) implementing Section 106 of NHPA, had the potential to be met; and

WHEREAS, the Rural Utilities Service (RUS) has determined that the financial assistance it may provide to rural electric cooperatives and other entities for construction or modification of electrical transmission facilities (including transmission lines and substations) to power some

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Keystone Project pump stations, under USDA Rural Development's Utilities Programs, makes such construction or modification an undertaking that requires review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the United States Army Corps of Engineers (USACE) has determined that the approval for the Keystone Project to cross USACE administered lands (30 U.S.C. § 185) and to place structures in, under or over navigable waters of the United States, as defined under 33 CFR 329, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), and a permit for the placement of dredge or fill material in waters of the United States as part of the Keystone Project in accordance with Section 404 of the Clean Water Act (33 U.S.C. § 344; see 33 CFR 323), requires review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the Natural Resources Conservation Service (NRCS) has determined that subordination of its rights to a 2.3 acre portion of a single Wetlands Reserve Program (WRP) (16 U.S.C. § 3837 et seq) easement in the State of Missouri to TransCanada for the purposes of installation and maintenance of the Keystone Project pipeline requires review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the NRCS has determined that such subordination of the 2.3 acre portion of the WRP easement in the State of Missouri (by modification of the Warranty Easement Deed, under the authority of 16 U.S.C. § 3837e) may only occur after issuance of the Final Environmental Impact Statement (EIS) by DOS (issued January 11, 2008) and 30 days after publication of a Record of Decision (ROD, in process); and

WHEREAS, the Farm Service Agency (FSA) has determined that approval for the Keystone Project to cross private lands it manages through individual farm participation programs, like the Conservation Reserve Program and the Farmable Wetlands Program, requires review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the U.S. Fish and Wildlife Service (USFWS) has determined that approval for the Keystone Project to cross federal lands it administers and private lands it manages through federal easements, pursuant to the National Wildlife Refuge Systems Administration Act (16 U.S.C. 668dd(c)), requires review under Section 106 of NHPA and 36 CFR Part 800; and

WHEREAS, the RUS, USACE, NRCS, FSA, and USFWS have designated the DOS as the lead federal agency for purposes of Section 106 of the NHPA in accordance with 36 CFR § 800.2(a)(2); and

WHEREAS, the Western Area Power Administration (WAPA) remains individually responsible for compliance with Section 106 of NHPA and 36 CFR Part 800 for the modification and construction of substations to power the Keystone Project; and

WHEREAS, the proposed Keystone Project pipeline alignment crosses North Dakota, South Dakota, Kansas, Nebraska, Illinois, Missouri and Oklahoma; and

WHEREAS, the Keystone Project area of potential effects (APE) includes: (1) in North Dakota

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– a 300 foot wide corridor, centered on centerline; (2) in South Dakota – 300 foot wide corridor, centered on centerline; (3) in Nebraska – 300 foot wide corridor centered on centerline and in collocated areas 60 foot wide corridor on collocated side and 240 wide corridor on non-collocated side; (4) in Kansas – 200 foot wide corridor centered on centerline and 300 foot wide corridor for Cushing Extension corridor; (5) in Missouri – 200 foot wide corridor centered on centerline for the Rockies Express Pipeline Project (REX); (6) in Illinois – 200 foot wide corridor for areas with collocated pipeline (40 foot corridor on collocated side and 160 foot wide corridor on non-collocated side and 300 foot wide corridor centered on centerline in greenfield areas; (7) in Oklahoma – 300 foot wide corridor centered on centerline; and (8) project related access roads, transmission facilities and corridors, temporary work spaces or construction areas, pipeline reroutes, and appurtenant facilities; and

**WHEREAS**, the DOS has determined that the construction of the Keystone Project may have an adverse effect on properties listed in or eligible for listing in the National Register of Historic Places (NRHP), and has consulted with the North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Missouri, and Illinois State Historic Preservation Officers (SHPOs), and the ACHP, pursuant to 36 CFR Part 800; and

**WHEREAS**, in accordance with 36 CFR §§ 800.4(b)(2) and 800.5(a)(3), the DOS has elected to phase identification and evaluation of historic properties, and application of the criteria of adverse effect, respectively, because access to those areas identified in Attachment A has been restricted by property owners' refusal to grant TransCanada permission to enter their private property; and

**WHEREAS**, pursuant to 36 CFR § 800.14(b), the DOS has elected to execute this Programmatic Agreement (PA) for the Keystone Project because effects on historic properties cannot be fully determined prior to the issuance of a permit for the undertaking; and

**WHEREAS**, the DOS will incorporate this PA into its decisional process on any Presidential permit that it may issue for the Keystone Project and will include in any permit it issues on the Keystone Project a condition that TransCanada will abide by its commitments in this PA; and

**WHEREAS**, TransCanada, which will construct the Keystone Project pipeline, has participated in consultation, has been invited by DOS under 36 C.F.R. §§ 800.2(c)(4) and 800.6(c)(2) to sign this agreement as an invited signatory and intends to sign this agreement as an invited signatory; and

**WHEREAS**, the rural electric cooperatives and other entities which may apply to RUS for financial assistance to construct or modify transmission facilities did not participate in consultation to develop this PA; and

**WHEREAS**, DOS invited the Indian tribes listed in Attachment B to participate in consultation; and

**WHEREAS**, the Absentee-Shawnee Tribe of Indians of Oklahoma, Blackfeet Tribe, Cheyenne-Arapaho Tribe of Oklahoma, Flandreau Santee Sioux Tribe, Forest County Potawatomi

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Community of Wisconsin Potawatomi Indians, Fort Peck Tribes, Gun Lake Potawatomi, Ho-Chunk Nation of Wisconsin, Iowa Tribe of Kansas and Nebraska, Iowa Tribe of Oklahoma, Kaw Nation, Kickapoo Tribe of Kansas, Lower Sioux Indian Community, MIA Nation (Three Affiliated Tribes), Mille Lacs Band of Ojibwe, Oglala Sioux Tribe, Osage Nation, Pawnee Nation of Oklahoma, Ponca Tribe of Oklahoma, Ponca Tribe of Nebraska, Rosebud Sioux Tribe, Sac & Fox Nation, Santee Sioux Tribe of Nebraska, Shakopee Mdewakanton Sioux (Upper Sioux Pezhutazizi Kap), Sisseton-Wahpeton Oyate Sioux, Sisseton-Wahpeton Oyate Wahpekute, Spirit Lake Tribe, Standing Rock Sioux Tribe, Tonkawa Tribe, United Keetoowah Band of Cherokee Indians, Upper Sioux-Pezhutazizi Kapi, and Yankton Sioux have participated in consultation and have been invited to concur in this PA, in accord with 36 C.F.R. §§ 800.2(c)(2) and 800.6(c)(3);

NOW, THEREFORE, the DOS, RUS, USACE, NRCS, FSA, USFWS, ACHP and the North Dakota, South Dakota, Kansas, Nebraska, Illinois, Missouri and Oklahoma SHPOs agree that the following stipulations will be implemented in order to take into account the effect of the undertaking on historic properties and to satisfy all responsibilities under Section 106 of the NHPA.

## STIPULATIONS

The DOS, RUS, USACE, NRCS, FSA, and USFWS, as appropriate, will ensure that the following measures are carried out.

### I. STANDARDS

- A. Identification and evaluation studies and treatment measures required under the terms of this PA will be carried out by or under the direct supervision of a professional(s) who meets, at a minimum, the *Secretary of the Interior's Historic Preservation Professional Qualification Standards* (48 FR 44716, September 29, 1983).
- B. In developing scopes of work for identification and evaluation studies, and treatment measures required under the terms of this PA, TransCanada and RUS applicants will take into account the following guidance:
  1. the ACHP's guidance on conducting archaeology under Section 106 (2007);
  2. the ACHP's *Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007);
  3. applicable SHPO guidance;
  4. the Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42, September 29, 1983);
  5. the "Treatment of Archaeological Properties" (ACHP 1983);
  6. the *Guidelines for Reporting on Cultural Resources Investigations for Pipeline Projects* (Federal Energy Regulatory Commission, Office of Energy Projects, December 2002);
  7. Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403); and

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8. Section 404 of the Clean Water Act (33 U.S.C. § 344).

## II. CONFIDENTIALITY

DOS, RUS, and USACE will safeguard information about historic properties of religious and cultural significance to Indian tribes, including location information, or information provided by Indian tribes to assist in the identification of such properties, to the extent allowed by Section 304 of NHPA [16 U.S.C. 470w3] and other applicable laws.

## III. USACE RESPONSIBILITIES

- A. The USACE will ensure that the requirements of this PA have been met for that part of the APE under its jurisdiction, pursuant to Section 10 and Section 404 permitting authority.
- B. The USACE will comply with Section 106 and its implementing regulations (36 CFR Part 800) for the issuance of permits for those actions under its jurisdiction.

## IV. KEYSTONE PROJECT – CONSTRUCTION OR MODIFICATION OF ELECTRICAL TRANSMISSION FACILITIES

- A. Prior to granting approval of financial assistance to construct or modify electrical transmission facilities by rural electric cooperatives or other entities, RUS will complete the requirements of 36 CFR §§ 800.3 through 800.7.
- B. In implementing Stipulation IV.A, RUS may authorize an applicant to initiate Section 106 consultation in accordance with 36 CFR § 800.2(c)(4). In doing so, RUS may not delegate its responsibility to conduct government-to-government consultation with Indian tribes to an applicant. An applicant may consult with an Indian tribe only if RUS and that tribe agree, in writing, to conduct consultation in that manner.
- C. RUS will ensure that the terms of Stipulation VI.B and Attachment D are incorporated into construction contracts to ensure that its applicants and construction contractors meet their responsibility for notification of any unanticipated discoveries.

## V. KEYSTONE PROJECT – PIPELINE CONSTRUCTION

- A. The DOS has and will continue to offer consulting parties with an opportunity to provide their views on the identification and evaluation of historic properties, including historic properties of religious and cultural significance to Indian tribes, and the treatment of affected historic properties, in connection with the construction of the Keystone Pipeline Project.

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B. DOS remains responsible for conducting government-to-government consultation with Indian tribes, unless the tribe agrees, in writing, to consult directly with TransCanada.

## C. Identification of Historic Properties

1. In consultation with the SHPOs and other consulting parties, the DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties within the APE for each construction spread prior to the initiation of construction of that spread, in accordance with 36 CFR § 800.4(a), (b) and (c). On federal lands, the scope of the identification effort will be determined by the appropriate federal land managing agency.
2. In the event identification of historic properties cannot be completed before the start of construction, TransCanada will develop and submit a plan to DOS for review and approval pursuant to Stipulation V.E that describes the measures it will implement to complete the identification and evaluation of historic properties before such properties are adversely affected by vegetation clearing and construction activities related to that spread.
3. For the APE in the North Dakota and South Dakota spreads, DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties, in accordance with 36 CFR § 800.4(a), (b) and (c), before initiating construction activities, including vegetative clearing to comply with the Migratory Bird Treaty Act, on or about March 1, 2008.
  - a. For those portions of the APE affected by construction of the North and South Dakota spreads, the DOS will complete the identification of historic properties to which Indian tribes attach religious and cultural significance. In the identification and evaluation of such historic properties, the DOS will rely on information submitted by Indian tribes to DOS by February 15, 2008.
  - b. In the event identification of historic properties cannot be completed for these two (2) spreads prior to March 1, 2008, TransCanada will develop and submit a plan to DOS for review and approval pursuant to Stipulation V.E that describes the measures it will implement to complete the identification and evaluation of historic properties before such properties are adversely affected by vegetation clearing and construction activities related to that spread.

## D. Treatment of Historic Properties

1. Whenever feasible, avoidance of adverse effects to historic properties will be the preferred treatment. In consultation with the DOS, SHPOs, and other consulting

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parties, TransCanada may elect to consider and implement avoidance measures prior to completing the evaluation of historic properties.

2. When historic properties are identified in the APE pursuant to Stipulation IV.C, DOS will apply the criteria of adverse effect in accordance with 36 CFR § 800.5(a) in consultation with the SHPO and other consulting parties. If DOS finds that historic properties might be adversely affected by pipeline construction, DOS will consult with the SHPO and other consulting parties to determine prudent and feasible ways to avoid adverse effects.
  - a. Once DOS approves avoidance measures, TransCanada will implement those measures.
  - b. TransCanada will notify DOS if it finds that the implementation of such measures is not prudent and feasible. DOS will consider proposed alternatives to the avoidance measures in accordance with the terms of Stipulation V.C through H.
3. If DOS determines that the adverse effect cannot be avoided, DOS will consult with the SHPO and other consulting parties to determine those measures to be implemented by TransCanada to minimize and mitigate adverse effects on affected historic properties identified in the construction spread APE.
4. TransCanada will draft a comprehensive Treatment Plan that describes the measures identified by DOS to minimize and mitigate the adverse effect of pipeline construction activities on historic properties, the manner in which these measures will be carried out and a schedule for their implementation:
  - a. When mitigation consists of or includes data recovery, the Treatment Plan also will identify the specific research questions to be addressed by data recovery with an explanation of their relevance, the archaeological methods to be used, and provisions for public interpretation and education, subject to Stipulation II restrictions, if any.
  - b. TransCanada will submit the draft Treatment Plan to the DOS, ACIP, SHPO and other consulting parties for a fifteen (15) day review. TransCanada shall address timely comments and recommendations submitted by consulting parties in preparation of the Final Treatment Plan.
  - c. When it has addressed all of the comments and recommendations, TransCanada will submit the Final Treatment Plan to DOS for review and approval.
5. TransCanada will make a reasonable and good faith effort to complete implementation of the Final Treatment Plan approved by DOS prior to beginning construction of any spread. If it is not possible to meet this schedule, TransCanada will develop a plan in accordance with Stipulation VI.E that establishes how

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appropriate treatment will be determined and implemented during construction of the respective spread.

## E. Coordination of Construction and Historic Preservation Activities

1. The DOS will make a reasonable and good faith effort to complete the identification and evaluation of historic properties, and the mitigation of adverse effects to them in accordance with Stipulations VI.C.I and VI.D prior to the initiation of vegetative clearing and construction on the Keystone spreads, including the North Dakota and South Dakota spreads.
2. If these DOS activities cannot be completed prior to the start of vegetative clearing and construction of these spreads, TransCanada shall develop and provide to DOS a detailed plan describing how the requirements of Stipulations VI.C and D – identification, evaluation and treatment - will be completed in coordination with vegetative clearing and construction activities in such a way that historic properties will not be adversely affected prior to the implementation of any mitigation measures.
  - a. The Coordination Plan will include those measures developed by TransCanada pursuant to Stipulations V.C and D to complete the identification and evaluation of historic properties, and, as appropriate, mitigation of adverse effects to them during and coordinated with vegetation clearing and construction activities. In addition, the plan will include a schedule for all proposed activities and recommended measures for the protection of unanticipated discoveries in accordance with Attachments C and D, as appropriate.
  - b. TransCanada will submit the draft Coordination Plan for such spreads, including the North and South Dakota spreads, to the DOS, ACHP, SHPO and other consulting parties for fifteen (15) day review. TransCanada shall address timely comments and recommendations submitted by consulting parties in preparation of the Final Coordination Plan. When it has addressed all of the comments and recommendations, TransCanada will submit the Final Coordination Plan to DOS for review and approval.
3. TransCanada will complete implementation of the Final Coordination Plan approved by DOS during construction of the North and South Dakota spreads.

## F. Construction Monitoring

1. In consultation with the SHPOs and Indian tribes, TransCanada will monitor construction in selected areas of the APE of each spread as a supplement to identification efforts. Any historic properties identified by TransCanada will be treated in accordance with Stipulation VI.A and C.
2. Construction monitoring will be performed by a professional who meets the qualification standards archaeology established in Stipulation I.A.

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3. TransCanada shall consider information provided by Indian tribes in completing the identification of historic properties before construction begins and in preparing a construction monitoring plan provided for under Stipulation V.F.4. TransCanada shall provide Indian tribes an opportunity to participate as monitors during project construction.
4. TransCanada will submit a draft plan for construction monitoring for each spread to the DOS, ACHP, SHPO and other consulting parties for fifteen (15) day review. TransCanada shall address timely comments and recommendations submitted by consulting parties in preparation of the Final Monitoring Plan. TransCanada will submit the Final Monitoring Plan to DOS for review and approval.
5. TransCanada will implement the Final Monitoring Plan for each spread that has been approved by DOS.

## G. Construction

1. Environmental Inspector (EI): Prior to initiating vegetative clearing or construction, TransCanada will employ an EI whose responsibilities will include ensuring compliance with the terms of this PA. In meeting this responsibility, the EI will rely on the technical expertise of professionals who meet the standards established in Stipulation I.A.
  - a. The EI will monitor construction activities on-site and prepare a daily log reporting to TransCanada on activities performed to implement the terms of this PA, as appropriate. TransCanada will make the daily log available to the DOS and other consulting parties upon request.
  - b. TransCanada will ensure through the construction contract that the EI will possess the authority to stop construction in the event of an inadvertent discovery in accordance with Stipulation VI.A and Attachment C.
2. Training: TransCanada will ensure that if the EI does not meet the professional qualification standards established in Stipulation I.A, the EI receives appropriate training in historic preservation from a professional who meets the standards established in Stipulation I.A in order to perform the requirements of this PA. TransCanada also will provide an appropriate level of training in historic preservation conducted by a professional who meets the standards established in Stipulation I.A to all construction personnel (including new, added, replaced workers) so that PA requirements are understood and unanticipated discoveries quickly identified. TransCanada will offer this training prior to initiating vegetative clearing or construction activities on a spread, and conduct periodic refresher training during construction of the spread.

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3. The DOS will ensure that Indian tribes are afforded a reasonable opportunity to provide information about historic properties of religious and cultural significance to them during pipeline construction.
4. Construction Contract: TransCanada will incorporate the terms of Stipulation VI.A and Attachment C into construction contracts to ensure that its EI and construction contractors meet their responsibility for notification of the unanticipated discoveries.

## H. Scheduling

The DOS may authorize the start of vegetative clearing and construction for an individual spread when the plans prepared in accordance with Stipulations V.D.4, V.E and V.F as appropriate for that spread, have been submitted by TransCanada and approved by DOS in accordance with the terms of this PA.

- I. Before concluding pipeline construction, TransCanada will distribute to the SHPOs descriptive information about identified archaeological sites in GIS format.

## VI. UNANTICIPATED DISCOVERIES DURING CONSTRUCTION OF THE KEYSTONE PROJECT

### A. Pipeline Construction

1. "Applicable federal agency" is the federal agency with jurisdiction for the land on which construction is occurring or, in the absence of such an agency, DOS, USACE, or RUS as appropriate.
2. If previously unidentified historic properties are discovered unexpectedly as pipeline construction activities are carried out within the 110-foot-wide construction corridor, the construction contractor will immediately halt all construction activity within a one-hundred (100) foot radius of the discovery, notify TransCanada's EI of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the EI shall:
  - a. inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
  - b. clearly mark the area of the discovery;
  - c. implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
  - d. notify the applicable federal agency, the SHPO, the ACHP and other consulting parties, including Indian tribes, of the discovery.
3. The applicable federal agency will have seven (7) calendar days following notification provided in accordance with Stipulation VI.A.2 to determine the National Register eligibility of the discovery after considering the timely filed views of the

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SHPO, TransCanada and other consulting parties. The applicable federal agency may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR § 800.13(c).

4. For properties determined eligible pursuant to Stipulation VI.A.3, the applicable federal agency will notify the SHPO, ACHP and other consulting parties of those actions that it proposes to resolve adverse effects.
  - a. Consulting parties will have forty-eight (48) hours to provide their views on the proposed actions.
  - b. The applicable federal agency will ensure that the timely filed recommendations of consulting parties are taken into account prior to granting approval of the measures that TransCanada will implement to resolve adverse effects.
  - c. TransCanada will carry out the approved measures prior to resuming construction activities in the location of the discovery.
5. Dispute Resolution: The applicable federal agency will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding resolution of adverse effects. The applicable federal agency will use the contact information provided in Attachment C or D in order to notify the ACHP. Within seven (7) days of receipt of such a written request, the ACHP will provide the applicable federal agency with recommendations on resolving the dispute. The applicable federal agency will take into account any timely filed recommendations provided by the ACHP in making a final decision about how to proceed.

## B. Construction or Modification of Electrical Transmission Facilities

1. If previously unidentified historic properties are discovered unexpectedly during construction or modification of transmission facilities the construction contractor will immediately halt all construction activity within a one-hundred (100) foot radius of the discovery, notify the RUS applicant of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the RUS applicant shall:
  - a. inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
  - b. clearly mark the area of the discovery;
  - c. implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
  - d. notify RUS and the SHPO of the discovery.
2. Upon receipt of such notification RUS will immediately notify the SHPO and other consulting parties, including Indian tribes of the discovery.
3. RUS will have seven (7) calendar days following notification provided in accordance with Stipulation VI.B.1 to determine the National Register eligibility of the discovery.

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in consultation with the SHPO, the applicant and other consulting parties. The RUS may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR § 800.13(c).

4. For properties determined eligible pursuant to Stipulation VI.B RUS will notify the SHPO and other consulting parties of those actions that it proposes to resolve adverse effects. Consulting parties will provide their views on the proposed actions within forty-eight (48) hours. RUS will ensure that the timely filed recommendations of the SHPO and other consulting parties are taken into account prior to granting approval of those actions that the applicant will implement to resolve adverse effects. Once RUS approval has been granted, its applicant will carry out the approved measures prior to resuming construction activities in the location of the discovery.
5. Dispute Resolution: RUS will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding the resolution of adverse effects. The applicable federal agency will use the contact information provided in Attachment D in order to notify the ACHP. Within seven (7) days of receipt of such a written request, the ACHP will provide RUS with its recommendations for resolving the dispute. RUS will take into account any recommendations provided by the ACHP in making a final decision about how to proceed.
6. Reporting: Within six (6) months of the resumption of construction within the location of the discovery, RUS will submit a final report to the SHPO and other consulting parties describing implementation of the actions taken in accordance with Stipulation VI.B and, as appropriate, the analysis and interpretation of recovered information.

## C. Unanticipated Discovery of Human Burials and Remains, and Funerary Objects

1. When Native American human remains or funerary objects or objects of cultural patrimony are unexpectedly discovered during construction of the Keystone Project on federal or tribal lands within the APE, TransCanada or a RUS applicant, as appropriate, will notify immediately the federal agency responsible for compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001 et. seq.] and its implementing regulations, 43 C.F.R. Part 10.
2. Non-Native American human burials and remains, and funerary objects discovered on federal lands within the APE will be treated by the federal agency having jurisdiction of the remains in accordance with applicable federal law, taking into account the ACHP's *Policy Statement on the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007).
3. DOS and RUS will treat human burials and remains discovered on non-federal land in accordance with the provisions of Attachments C and D, respectively, and any applicable laws. In those instances where the USACE has jurisdiction under Section

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10 or 404 permitting authority for non-federal lands in the APE, the USACE will ensure that TransCanada complies with the provisions of Attachment C acting in the place of the DOS. In determining appropriate actions to be carried out, DOS, USACE and RUS will be guided by the ACHIP's *Policy Statement on the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007)

## VII. CURATION

- A. Federal agencies will curate any artifacts, materials or records resulting from archaeological identification and mitigation conducted on federal lands under their jurisdiction in accordance with 36 CFR Part 79, "*Curation of Federally-Owned and Administered Archaeological Collections*".
- B. TransCanada and RUS applicants will return all artifacts recovered from private lands to the respective landowner after analysis is complete, unless applicable state law requires otherwise. TransCanada and RUS applicants will encourage and assist landowners in donating any returned artifacts to a local curation facility identified by the respective SHPO.
- C. Federal agencies will determine the disposition of human burials, human remains and funerary objects in accordance with applicable federal and state law.

## VIII. REPORTING

- A. Within one year of completion of pipeline construction of a spread, TransCanada will submit a comprehensive draft report to DOS describing the results and findings of the implementation of the actions and plans specified in Stipulations V.C through G, V.L.A., including Attachment C.
- B. TransCanada will submit a draft comprehensive report for each spread to the DOS, SHPO(s) and other consulting parties for thirty (30) day review and comment. TransCanada shall address timely comments and recommendations submitted by consulting parties in preparation of the Final Comprehensive Report for that spread. TransCanada will submit the final report to DOS for review and approval.

## IX. MONITORING IMPLEMENTATION OF THE PA

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Each quarter following the execution of this PA until it expires or is terminated, the DOS with the assistance of RUS, USACE, NRCS, FSA and USFWS will provide the consulting parties to this PA a progress report summarizing the work carried out pursuant to its terms. Such report will include any scheduling changes proposed; any problems encountered, and any disputes and objections received in the efforts to carry out the terms of this PA. DOS will maintain and update a list of the current contact for the consulting parties to be distributed each quarterly report.

## X. DISPUTE RESOLUTION

- A. "Appropriate federal agency" refers to the DOS, RUS or the federal land managing agency, as applicable.
- B. Should any signatory or concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the appropriate federal agency will consult with such party to resolve the objection. If the appropriate federal agency determines that such objection cannot be resolved, the appropriate federal agency will:
  1. Forward all documentation relevant to the dispute, including the applicable federal agency's proposed resolution, to the ACHP. The ACHP will provide the appropriate federal agency with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the appropriate federal agency will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The appropriate federal agency will then proceed according to its final decision.
  2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the applicable federal agency may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the appropriate federal agency will prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- C. The appropriate federal agency's responsibility is to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remaining unchanged.

## XI. DURATION

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This PA will be null and void if all of its stipulations have not been carried out within four (4) years from the date of its execution. At such time, and prior to work continuing on the Keystone Project, the DOS, RUS, USACE, NRCS, FSA, and USFWS will either (a) execute a Memorandum of Agreement (MOA) or PA pursuant to 36 CFR §§ 800.6 or 800.14(b), respectively, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR. § 800.7. Prior to such time, the DOS may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation X. The DOS, RUS, USACE, NRCS, FSA, and USFWS will notify the signatories and concurring parties as to the course of action they will pursue.

## XII. AMENDMENT

Any signatory party to this PA may propose in writing to the other signatory parties that it be amended. The signatory parties will consult in an effort to reach agreement on an amendment. Any amendment will be effective on the date it is signed by all of the signatories and filed with the ACHP.

## XIII. TERMINATION

- A. If any signatory to this PA determines that its terms will not or cannot be carried out, that party will immediately consult with the other parties to attempt to develop an amendment per Stipulation XII. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.
- B. Once the PA is terminated, and prior to work continuing on the undertaking, the DOS, RUS, USACE, NRCS, FSA, and USFWS must either (a) execute, as appropriate, an MOA or PA pursuant to 36 CFR §§ 800.6 or 800.14(b), respectively, or (b) request, take into account, and respond to the comments of the ACHP in accordance with 36 CFR § 800.7. The DOS, RUS, USACE, NRCS, FSA, and USFWS will notify the signatories and concurring parties as to the course of action it will pursue.

## XIV. SCOPE OF THE PA

This Agreement is limited in scope to actions that will facilitate the construction of the Keystone Project and related facilities, and is entered into solely for that purpose.

**EXECUTION** of this PA by the DOS, ACHP, RUS, USACE, NRCS, FSA, USFWS, the North Dakota SHPO, South Dakota SHPO, Kansas SHPO, Nebraska SHPO, Illinois SHPO, Missouri SHPO and Oklahoma SHPO, and implementation of its terms evidence that the DOS, RUS, USACE, NRCS, FSA, USFWS have taken into account the effects of the Keystone Project on historic properties and afforded the ACHP an opportunity to comment.

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*John D. Negroponte*  
John D. Negroponte  
Deputy Secretary of State  
United States Department of State

*2/15/08*

Date

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David C. Press  
Colonel, Corps of Engineers  
District Commander

Date

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**UNCLASSIFIED**

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Matthew Ponish

Date

National Environmental Compliance Manager

United States Department of Agriculture

Farm Service Agency

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**UNCLASSIFIED**

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Mr. Roger A. Hansen  
State Conservationist, Missouri  
Natural Resources Conservation Service  
United States Department of Agriculture

Date

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Mr. Mark S. Plank  
Federal Preservation Officer  
United States Department of Agriculture  
Rural Development, Utilities Programs  
(Rural Utilities Service)

Date

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Rick Coleman  
Assistant Regional Director  
United States Fish and Wildlife Service

Date

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Mr. John M. Fowler  
Executive Director  
Advisory Council on Historic Preservation

Date

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Ms. Anne Haaker  
Deputy State Historic Preservation Officer  
Illinois

Date

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Jennie Chinn  
State Historic Preservation Officer  
Kansas

Date

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Mr. Doyle Childers  
State Historic Preservation Officer  
Director,  
Missouri Department of Natural Resources

Date

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**UNCLASSIFIED**

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L. Robert Puschendorf  
Deputy State Historic Preservation Officer  
Nebraska

Date

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Mr. Merian E. Paaverud, Jr.  
State Historic Preservation Officer  
North Dakota

Date

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Dr. Bob L. Blackburn  
State Historic Preservation Officer  
Oklahoma

Date

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Mr. Jay D. Vogt  
State Historic Preservation Officer  
South Dakota

Date

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David Montemurro  
TransCanada Keystone Pipeline, L.P.  
(invited signatory)

Date

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Absentee-Shawnee Tribe of Indians of Oklahoma  
(concurring party)

Date

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**Blackfeet Tribe  
(concurring party)**

**Date**

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Cheyenne-Arapaho Tribe of Oklahoma  
(concurring party)

Date

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Flandreau Santee Sioux Tribe  
(concurring party)

Date

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Forest County Potawatomi Community of  
Wisconsin Potawatomi Indians  
(concurring party)

Date

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Fort Peck Tribes  
(concurring party)

Date

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Gun Lake Potawatomi  
(concurring party)

Date

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Ho-Chunk Nation of Wisconsin  
(concurring party)

Date

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Iowa Tribe of Kansas and Nebraska  
(concurring party)

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Iowa Tribe of Oklahoma  
(concurring party)

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Kaw Nation  
(concurring party)

Date

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Kickapoo Tribe of Kansas  
(concurring party)

Date

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Lower Sioux Indian Community  
(concurring party)

Date

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MHA Nation  
(Three Affiliated Tribes)  
(concurring party)

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Mille Lacs Band of Ojibwe  
(concurring party)

Date

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Oglala Sioux Tribe  
(concurring party)

Date

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Principle Chief Jim R. Gray  
Osage Nation  
(concurring party)

Date

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Pawnee Nation of Oklahoma  
(concurring party)

Date

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Ponca Tribe of Nebraska  
(concurring party)

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Rosebud Sioux Tribe  
(concurring party)

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Sac and Fox Nation  
(concurring party)

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Santee Sioux Tribe of Nebraska  
(concurring party)

Date

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Shakopee Mdewakanton Sioux  
(Upper Sioux Pezhutazizi)  
(concurring party)

Date

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Sisseton-Wahpeton Oyate Sioux  
(concurring party)

Date

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Sisseton-Wahpeton Oyate Wahpekutz  
(concurring party)

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Spirit Lake Tribe  
(concurring party)

Date

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**Standing Rock Sioux Tribe**  
(concurring party)

**Date**

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Tonkawa Tribe  
(concurring party)

Date

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United Keetoowah Bank of Cherokee Indians  
(concurring party)

Date

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Upper Sioux-Pezihutazizi Kapi  
(concurring party)

Date

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Yankton Sioux  
(concurring party)

Date

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